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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,206	11/25/2003	William Hallen Falls JR.	MR1035-1346	4075
4586	7590	10/30/2007		
ROSENBERG, KLEIN & LEE			EXAMINER	
3458 ELLICOTT CENTER DRIVE-SUITE 101			DIXON, ANNETTE FREDRICKA	
ELLICOTT CITY, MD 21043			ART UNIT	PAPER NUMBER
			3771	
			MAIL DATE	DELIVERY MODE
			10/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/720,206

Applicant(s)

FALLS ET AL.

Examiner

Annette F. Dixon

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-41, 44-48 and 51-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-41, 44-48 and 51-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to the request for continued examination and amendment filed on August 8, 2007. Examiner acknowledges claims 38-41, 44-48, and 51-55 are pending in this application, with claims 38, 45, and 52 having been amended and claims 1-37, 42, 43, 49-50, 56 and 57 having been cancelled.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 8, 2007 has been entered.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 38, 39, 44-46, and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall (4,205,680) in view of Rearick et al. (2004/0058072), and further in view of McAvinn (4,244,369) and Fabian (2005/0049563), collectively.

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As to Claims 38 and 45, Marshall discloses a surgical towel (10) comprising a sheet of woven fabric comprising at least one stitched hem (Figures 1 and 2), a thread for stitching the hem (22), and at least one piece of x-ray detectable material (21) attached to the fabric by the thread, the x-ray material protruding from the hem (Figures 1 and 2) allowing visual identification of the x-ray material's location, the x-ray detectable material comprising identifying characteristics to identify an x-rayed object as a surgical towel (Column 1). Yet, Marshall does not expressly disclose the limitations of the ply-ratio, the sheet of woven fabric to be made of 100% cotton, the thread to be of a different color than the fabric for stitching the hem and the thread color to be visually identifying the surgical towel as x-ray detectable, nor the identifying characteristics of the x-rayed object to be a brand name or number. However, at the time the invention was made the recited limitations were known.

Regarding the ply ratio, it is well known that the medical personnel would choose a ply-ratio commensurate with the surgical procedure being performed. For example: the absorptive quality required for a nosebleed is substantially less than the absorptive quality requirement for an open-heart surgery procedure.

Regarding the woven sheet of 100% cotton, Rearick teaches 100% cotton (in the form of treated and untreated fibers) to provide comfort to the user of the fabric and to provide fibers capable of producing superior absorbent qualities. (Paragraph 183).

Regarding the thread to be a different color than the fabric, McAvinn teaches the use of a thread (22) that is highly reflective and contrasts with the color of blood for the purpose of increasing the visibility of the absorbent material in the presence of blood.

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(Column 2). Further, McAvinn discloses the composition of the thread to have a central layer (24) made of a metallic reflective material sandwiched between two transparent outer layers (26), which enable the metallic central layer to be seen. (Figure 3).

Naturally the reflective nature of the thread will distinguish from the color of the fabric regardless of saturation by blood or water, and regardless of the color in which the towel has been dyed.

Regarding the identifying characteristics, Fabian teaches the use of other shapes such as stars circles and boxes (Figures 5-10) to provide additional identifying characteristics to the surgical towel. Further, Fabian teaches the shapes may include alphabetical and numerical characters. (Paragraph 0010). Intrinsically, the ability of the x-ray detectable material to comprise various shapes enables the use of a brand name or symbol as a marker to distinguish one surgical towel from another.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the article of Marshall to include 100% cotton fibers, as taught by Rearick, to increase absorption of the surgical towel, to include a thread color different from the fabric, as taught by McAvinn to increase the visibility of the absorbent article whether inside or outside the body, and to include identifying characteristics of brand names or numbers, as taught by Fabian to enable differentiation between the towels.

As to Claim 52, please see the rejection of claims 38 and 45. The difference between claim 52 and the rejection of claims 38 and 45 lies in that claim 52 recites a plurality of x-ray detectable materials. However, it would have been obvious to one

having ordinary skill in the art at the time the invention was made to include a plurality of x-ray detectable materials to provide additional surgical towel differentiating means, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

As to Claims 44 and 51, the system of Marshall/Rearrick/McAvinn/Fabian discloses a surgical towel, yet the limitations of the physical characteristics of the x-ray detectable material to be a flexible strip through which the hem stitching is sewn have yet to be discussed. However, at the time the invention was made the recited physical characteristics of the x-ray detectable material were known. Specifically, McAvinn teaches the "filament (20) may be made of a thermoplastic polymeric material containing a radiopaque material such as barium sulfate. (Column 2, Lines 43-46). Naturally, the composition of the filament and the placement of the filament into the woven cloth would allow for some flexibility in the strip. Further, depending on the placement of the strip, the strip may be sewn in place to maintain the location of the radioactive element. Finally, McAvinn's flexible strip serves a purpose of providing a means for smooth incorporation into the sheet (12). (Figure 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Marshall/Rearrick/McAvinn/Fabian to incorporate the flexible strip, as taught by McAvinn for the purpose of maintaining the pliable nature of the fabric while providing x-ray detectable material.

As to Claims 39, 46, and 53, the system of Marshall/Rearrick/McAvinn/Fabian discloses a surgical towel, yet the limitations of the x-ray material being made of Barite,

Barium, or BaSO_4 , have yet to be discussed. However, at the time the invention was made, the use of Barium sulfate (BaSO_4) for x-ray detection was well known.

Specifically, McAvinn teaches the "filament (20) may be made of a thermoplastic polymeric material containing a radiopaque material such as barium sulfate." (Column 2, Lines 43-46). Barium Sulfate is a well-known material that is used in x-ray detection because of its ability to be safely introduced into the body. Therefore it would have been obvious to one having ordinary skill in the art to modify the system of Marshall/Rearrick/McAvinn/Fabian as taught by McAvinn for the purpose maintaining patient safety while providing a means for x-ray detection.

5. Claims 40, 41, 47, 48, 54, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall (4,205,680) in view of Rearick et al. (2004/0058072), and further in view of McAvinn (4,244,369) and Fabian (2005/0049563) as applied to claims 38 and 45 above, and further in view of Debusk (5,792,128).

As to Claims 40, 47 and 54, the system of Marshall/Rearrick/McAvinn/Fabian is discussed in Claims 38 and 45, respectively, yet does not expressly disclose the x-ray detectable material comprising polyvinyl chloride (PVC). However, the use of the recited x-ray detectable materials was known at the time the invention was made. Specifically, Debusk teaches an x-ray detectable material comprising 60% BaSO_4 and 40% PVC (see "polyvinyl chloride filled with at least about 60%...barium sulfate" in lines 30-32 of Column 4) for the purpose of a safe radioactive material capable of being used within the body for x-ray detection. Finally, the recited x-ray detection materials are well-

known materials that are used in x-ray detection because of its ability to be safely introduced into the body. Therefore it would have been obvious to one having ordinary skill in the art to modify the system of Marshall/Rearrick/McAvinn/Fabian, as taught by Debusk for the purpose maintaining patient safety while providing a means for x-ray detection.

As to Claims 41, 48, and 55, the system of Marshall/Rearrick/McAvinn/Fabian is discussed in Claims 38 and 45, respectively, yet does not expressly disclose the x-ray detectable material having 60% BaSO₄ and 40% PVC. However, the use of the recited x-ray detectable materials was known at the time the invention was made. Specifically, Debusk teaches an x-ray detectable material comprising 60% BaSO₄ and 40% PVC (see "polyvinyl chloride filled with at least about 60%...barium sulfate" in lines 30-32 of Column 4) for the purpose of a safe radioactive material capable of being used within the body for x-ray detection. Finally, the recited x-ray detection materials are well-known materials that are used in x-ray detection because of its ability to be safely introduced into the body. Therefore it would have been obvious to one having ordinary skill in the art to modify the system of Marshall/Rearrick/McAvinn/Fabian, as taught by Debusk for the purpose maintaining patient safety while providing a means for x-ray detection.

Response to Arguments

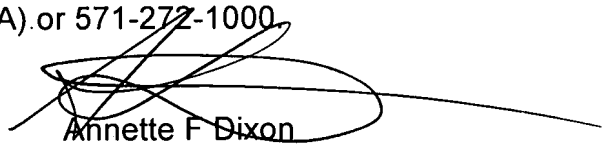
6. Applicant's arguments with respect to claims 38-41, 44-55 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Annette F Dixon
Examiner
Art Unit 3771



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10/29/07